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7 **ATTORNEYS FOR PLAINTIFF,**  
8 **THOMAS SPILSBURY, JR.**



9 **UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**  
11 **SAN JOSE DIVISION**

12 **THOMAS SPILSBURY, JR.,**

13 **Plaintiff,**

14 **v.**

15 **TARGET CORPORATION, SELECT**  
16 **BRANDS, INC. and DOES 1 through**  
17 **25, inclusive,**

18 **Defendants.**

**No. CV 09 05955 JW [HRL]**

**ORDER DENYING STIPULATION TO**  
**MODIFY SCHEDULING ORDER/**  
**DISCOVERY CUTOFF/ MOTION FOR**  
**SUMMARY JUDGMENT/ MOTION FOR**  
**PROTECTIVE ORDER**

19 **WHEREAS, the May 12, 2010, Scheduling Order designated a discovery cutoff**  
20 **date of January 21, 2011.**

21 **WHEREAS there is no trial date yet set or currently pending for this action nor**  
22 **has this case been set for trial previously.**

23 **WHEREAS, the parties wish to modify the timing of certain discovery beyond**  
24 **the January 21, 2011 discovery cutoff in light of a potentially dispositive Motion for**  
25 **Summary Judgment.**

26 **WHEREAS, defendants filed a Notice of Motion and Motion for Summary**  
27 **Judgment on November 10, 2010.**

28 **WHEREAS, this Court granted Plaintiff's motion to extend time regarding**  
**defendants' motion for Summary Judgment from December 20, 2010 to February 28,**

2011 and ordered the parties to comply with the following briefing schedule:

1. On or before January 21, 2011 Plaintiff shall file its Opposition to Defendants' Motion for Summary Judgment; and
2. On or before February 4, 2011, Defendants shall file their Reply.

WHEREAS, this Court continued the Preliminary Pretrial Conference to March 21, 2011 in light of its previous Order.

WHEREAS, there have been PMQ employee deposition notices and written discovery served by Plaintiff on Defendants for completion of discovery on or before the designated discovery cutoff which Plaintiff contends are necessary to properly prepare an Opposition to Defendants Motion for Summary Judgment both falling on January 21, 2011.

WHEREAS Defendants have served deposition notices of various witnesses and subpoenas for records on or before the designated discovery cut off.

WHEREAS, Defendants filed a corresponding Motion for Protective Order relating to discovery served by plaintiffs which was set by the Court for February 1, 2011 which date is after the scheduled date for the discovery responses and depositions and after close of discovery and the opposition date for the Motion for Summary Judgment.

WHEREAS, the parties wish to resolve their discovery disputes, the issues remaining on defendants Motion for Protective Order and streamline the discovery process as well as the Motion for Summary Judgment for the benefit of the Court, the parties and attorneys.

IT IS THEREFORE STIPULATED, AGREED AND JOINTLY REQUESTED by the parties, by and through their respective attorneys of record, that this court enter an order modifying the discovery cutoff and motion dates set forth in the original May 12, 2010, Scheduling Order and modified thereafter by the Court or Magistrate such that:

- 1) Defendants hereby withdraw their Motion for Summary Judgment as to the punitive damage cause of action without prejudice and subject to refiling at a

1 later date.

- 2 2) Plaintiff's PMQ deposition of Target Corporation and PMQ deposition of Select  
3 Brands shall be completed on or before January 21, 2011. Defendants counsel  
4 agrees to provide available dates for these depositions, to be taken during the  
5 week of January 17, 2011, on or before January 13, 2011. These depositions  
6 shall take place in Kansas and Minnesota where the designated witnesses  
7 reside and counsel for both parties will be present at the depositions.
- 8 3) All expert depositions, pending noticed depositions, and written discovery is  
9 continued, and is to be commenced after February 28, 2011 and will be  
10 completed on or before sixty days (60 days) after this Court's ruling on the  
11 Motion for Summary Judgment.
- 12 4) Defendants' Motion for Protective Order currently set for February 1, 2011 shall  
13 be heard on March 8, 2011, and plaintiff's opposition brief shall be due  
14 commensurate with this new hearing date. All discovery which is the subject of  
15 this motion will be stayed pending the new hearing.
- 16 5) All other dates shall remain as set forth in the Scheduling Order.

17 **IT IS SO AGREED,**

18 CORSIGLIA McMAHON & ALLARD, LLP

19  
20 **Dated:** January 11<sup>th</sup>, 2011

By: 

TIMOTHY D. McMAHON  
Attorneys for Plaintiff

21  
22  
23 **IT IS SO AGREED,**

24 STONE & ASSOCIATES

25  
26 **Dated:** January 11, 2011

By: 

JULIET MACMILLIN LOMPA  
Attorneys for Defendants



1 PURSUANT TO STIPULATION, IT IS SO ORDERED,  
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3 Dated: January 18, 2011

4 By: James Ware  
5 JAMES WARE  
6 United States District Chief Judge  
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JAMES WARE  
United States District Chief Judge

**CERTIFICATE OF SERVICE  
(28 U.S.C. §1746)**

I am employed in the County of Contra Costa, State of California. I am over the age of 18 years and not a party to the within action. My business address is 2125 Ygnacio Valley Road, Suite 101, Walnut Creek, California 94598.

On the date indicated below, at the above-referenced business location, I transmitted the document(s) referenced below to the email address of the person designated, or by electronically filing the documents on the Court's ECF system **STIPULATION AND ORDER MODIFYING SCHEDULING ORDER/DISCOVERY CUTOFF/MOTION FOR SUMMARY JUDGMENT/MOTION FOR PROTECTIVE ORDER:**

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**Attorney for Plaintiff**

I declare under penalty of perjury that the foregoing is true and correct. Executed at Walnut Creek, California on January 11, 2011.

  
Celena Sepulveda